In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71–49

LOCAL UNION NO. 18, INTERNATIONAL UNION OF OPERATING ENGINEERS, PETITIONER

v.

JAMES D. HODGSON, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Northern District of Ohio, Eastern Division (Pet. App. B), is not officially reported. The opinion of the Court of Appeals for the Sixth Circuit (Pet. App. A) is reported at 440 F. 2d 485.

JURISDICTION

The judgment of the court of appeals was entered on April 9, 1971. The petition for a writ of certiorari was filed on July 8, 1971. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

441-040—71

QUESTION PRESENTED

Whether a union's requirement which precludes members of one sub-local from running for union office unless they first transfer to another sub-local (at a cost ranging from $75 to $114 for the first year) violates the right to run for office guaranteed to all union members by Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 481(e), when the requirement disqualifies about 60 percent of the union's membership.

STATUTE INVOLVED

Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 481 *et seq.*, provides in pertinent part:

> In any election required by this section which is to be held by secret ballot * * * every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) * * *.

STATEMENT

This action was brought by the Secretary of Labor under Section 402(b) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 482(b), to set aside an election of officers of petitioner local union. The principal issue in the courts below was whether the union's requirement that, in order to run for office, a member must transfer from one sub-local to another, at a substantial cost to himself, violates Section 401(e) of the Act, 29 U.S.C. 481(e). The district court held that the transfer require-

ment violates Section 401(e) and the court of appeals affirmed.

1. Local Union 18 is divided into four sub-locals: Local 18A, Local 18B, Local 18C, and a "Parent Local".[1] Local 18A members generally work as oilers, greasers, firemen, helpers and apprentices; Local 18B members operate various types of construction equipment; and Local 18C members generally work in quarries. Most members of the "Parent Local" are skilled operators of equipment (Pet. App. 9a). The wages of any member of Local 18 are determined by the type of work he performs. Members of the "Parent Local" receive no increment in wage rates, or preference in job referrals, over members of the other sub-locals. However, under the union's constitution, only members of the "Parent Local" are permitted to run for office in Local 18 (Pet. App. 7a).[2]

If a member of Local 18 (other than a member of the "Parent Local") chooses to run for union office, he must transfer to the "Parent Local". The transfer involves a substantial expenditure for the union members. For a member of Local 18A, the transfer costs $87 for the first year after the transfer (comprised of a $75 initiation fee, and $12 more in dues than is chargeable to a member of a branch local) and $12 for each year thereafter. For a member of Local 18B, the cost is a flat $75. For the members of Local 18C, the cost is $114 for the first year, and $24 for each

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[1] In this brief, "Local 18" or the "union" refers to the entire local union, *i.e.*, the composite of all four sub-locals. Sub-locals are specifically referred to by name.

[2] The sub-locals in Local 18 do not elect officers of their own.

year thereafter.[3] If a member transfers to the "Parent Local", he receives, in addition to the right to run for office, an additional $500 in life insuance and a paid up life membership after 30 years. (Pet. App. 11a). The union's constitution also requires a prospective candidate to have been a member in good standing of the "Parent Local" for one year before he becomes eligible to run for office (Pet. App. 3a).[4]

The union's transfer requirement has served to disqualify about 60 percent of its members from running for office.[5] This burden falls most heavily upon the union's poorest members, particularly those in

[3] These figures are based on the following facts: In order to transfer to the "Parent Local", a member of a branch must pay the Parent's $100 initiation fee, less the initiation fee already paid to the branch, which is $25 for Local 18A and Local 18B, and $10 for Local 18C. Thus the cost of the initiation fee alone is $75 for members of Local 18A and 18B and $90 for members of Local 18C. In addition, members of Local 18A would incur an increase in monthly dues of $1, or $12 per year, and members of Local 18C would incur an increase in monthly dues of $2, or $24 per year (App. 8). ("App." references are to the Appendix filed by the parties in the court of appeals, a copy of which we have lodged with this Court.)

[4] This provision is not at issue in the present suit; however, it effectively increases the impact of the "Parent Local" membership requirement, because it means that even if an employee pays the additional sum to become a member of the "Parent Local", he is not immediately eligible to run for office.

[5] As of July 1, 1965, just before the election at issue here, the membership of Local 18 was as follows (Pet. App. 3a):

Local 18A, 579 members.

Local 18B, 4840 members.

Local 18C, 1571 members.

Parent Local, 4349 members.

Local 18C. With respect to those employees, the union President testified (App. 51):

> Well, they are predominantly in the quarries and sand pits and have pretty much of a permanent job, and they might—and they are in a much lower scale.
>
> They would sort of resent the request of paying the $90. There might be an objection there.

During the seven years prior to the challenged election the cost of transferring has served to disqualify approximately 97 percent of Local 18C's members from running for office.[6] Several union members testified at trial that the cost had been a deterrent to their transferring (App. 33, 42, 47, 51).

2. This action was brought by the Secretary of Labor, pursuant to Section 402(b) of the Act, 29 U.S.C. 482(b), to set aside the August 1965 election of officers of Local 18. As stated in the district court's opinion (Pet. App. 12a), the Secretary attacked two separate aspects of the transfer requirement: (1) a rule that only persons with specific job skills could join the "Parent Local", and (2) the requirement that a member transfer from a branch local to the "Parent Local" in order to run for office. The district court held both requirements invalid (Pet. App. 12a–16a).

On appeal, the union challenged the district court's holding only with respect to the transfer require-

[6] During the seven years from 1959 through 1965, a total of only 43 of Local 18C's members transfered to the "Parent Local". As previously noted, *supra*, n. 5, in 1965 Local 18C had 1571 members.

ment (and not the job skill requirement). The court of appeals affirmed, on the grounds that (1) the rule's effect of precluding about 60 percent of the members from running for office substantially depletes the ranks of those who might run in opposition to the incumbents, and therefore impairs the use of democratic elections as a preventive measure against abuses of union power, see *Wirtz* v. *Hotel Employees Union, Local 6*, 391 U.S. 492, 499 (Pet. App. 4a–5a); (2) the requirement that union members incur a substantial cost prior to becoming eligible to run for office has no bearing on the fitness of those members to hold office (Pet. App. 5a); and (3) the requirement that an individual who has met all the financial and other prerequisites to becoming a member in good standing pay a substantial additional sum in order to run for office is "patently undemocratic", and has no parallel in political elections in this country, the model for union elections used by Congress in drafting the Act (Pet. App. 6a), see *Wirtz* v. *Local 6, supra,* 391 U.S. at 504.

ARGUMENT

The decision of the court of appeals is clearly correct, and there is no conflict among the circuits. Accordingly, there is no need for further review by this court.

1. As this Court held in *Wirtz* v. *Hotel Employees Union, Local 6,* 391 U.S. 492, 499:

> Congress plainly did not intend that the authorization in § 401(e) of "reasonable qualifications uniformly imposed" should be given a broad reach. The contrary is implicit in the

> legislative history of the section and in its wording * * *. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to the incumbents.

The union's transfer requirement—and its cost to the members—disqualifies approximately 60 percent of the members of the union as a whole, and about 97 percent of the persons in the sub-local whose members earn the lowest wages. Thus the requirement undoubtedly has "substantially deplete[d]" the ranks of those who might oppose the incumbents. See *Wirtz* v. *Local 6, supra,* 391 U.S. at 502.

2. Petitioner's argument that the transfer requirement can easily be met by anyone who cares to qualify for union office is without merit, because a member's ability or willingness to incur a substantial expenditure bears no relation to his ability to hold office. As the district court stated, "the Union's rule admittedly is not directly related to a candidate's ability to serve as an officer * * *" (Pet. App. 16a). "Parent Local" members do not receive any training to run the union which branch members do not receive (App. 25). Branch operating engineers attend the same membership and planning board meetings, and have the same right to participate and vote at those meetings, as do parent members, and have served as delegates to the International Convention (App. 26). "[Q]uite a few" branch members attend and participate in monthly meetings of the "Parent Local" (App. 34–36, 39–40, 45).

In this respect, the requirement under challenge here is less rational than the one struck down in *Local 6, supra.* For in *Local 6* the pertinent bylaw provided that only union members who have previously held elective union office could run for major elective office. Arguably, a candidate's prior experience in holding union office has a bearing on his fitness to hold major elective office. See 391 U.S. at 503. In this case, by contrast, the transfer requirement has no bearing whatsoever on a candidate's ability to hold union office.

3. Finally, the transfer requirement cannot be reconciled with the fact that in enacting the statute, "Congress' model of democratic elections was political elections in this country". *Wirtz* v. *Local 6, supra,* 391 U.S. at 504. The transfer requirement and its resulting cost to members is, as the court of appeals stated, "patently undemocratic" (Pet. App. 6a). As the court of appeals correctly indicated, a union may sell life insurance or a paid-up lifetime membership in the union, but it cannot sell the right to run for union office (Pet. App. 5a).

There is no merit to the union's suggestion (Pet. 14–15) that its transfer requirement is analogous to a filing fee. Regardless of whether a union might charge declared candidates a reasonable filing fee (to be used, for example, to cover the cost of printing ballots), the transfer requirement bears no relationship to such a fee. Unlike a filing fee, the transfer requirement here ranges in price from a flat $75 for members of Local 18B to a continuing expense of $114 for the first year, and $24 for each year thereafter, for members of Lo-

cal 18C. And no such "fee" is paid at all by candidates who are already members of the Parent Local. Furthermore, the money obtained by the union when members transfer to the "Parent Local" is not earmarked to pay the costs of conducting an election, but is used for general purposes.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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